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The Right of Return: The ISIS Bride

Casey Hare-Osifchin *

ABSTRACT

With the migration of Westerners to fight as a part of the Islamic State of Iraq and the Levant (“ISIS” or “ISIL”), there is an often-overlooked group of others who flock to the region in order to do what they consider to be their part. This is a group comprised of women, often extremely young, some even minors, who have felt compelled to fulfill their perceived duty to the Caliphate. They are usually branded ISIS brides. These girls and women are frequently radicalized online, and they subsequently travel to war-torn areas to be married to a member of ISIS and provide children for the Caliphate.

Recent news reports have highlighted many of these ISIS brides’ desire to return to their countries of origin. The United States--as well as other Western nations--has received requests for return and in some cases has subsequently denied these requests. What is the United States’ ability to reject one of its citizens’ requests to return home.

INTRODUCTION

The ability to travel in and out of one’s home country is often characterized as a fundamental right.¹ However, the evolving threat of terrorism has challenged the scope of this fundamental right.² Young men have flocked to aid the Islamic State of Iraq and the Levant

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¹ *C.f. Definitions of the Right to Freedom of Movement*, CLAIMING HUM. RTS., http://www.claiminghumanrights.org/freedom_movement_definition.html (last visited Dec. 3, 2019) (listing various international laws enshrining the right to freedom of movement).

² Mark Berman, *Young Men Left America to Join ISIS. They Ended Up Cooking and Cleaning for the Caliphate*,

(“ISIL,” or more commonly “ISIS”) in its effort to establish a caliphate; they are typically charged by their home country with conspiracy to provide material support to a terrorist organization.³ Another group has gone to support ISIS as well, but in a different way.⁴ By 2015, over 550 young women left their homes in Western nations to join ISIS, becoming wives to ISIS fighters and mothers to their children.⁵ The young women and girls playing this domestic support role have been referred to as ISIS brides.⁶

ISIS brides play a critical role in the perpetuation of terrorism. Women are often a form of encouragement for men to join ISIS as jihadist fighters.⁷ Serving as a sort of token, their “main role is to be commodities that can be traded and given away as rewards to jihadist fighters.”⁸ Additionally, they increase the numbers of potential fighters to support ISIS for years to come by birthing and indoctrinating new generations.⁹ Beyond just the traditional domestic role of cooking, cleaning, and raising children, they have even been responsible for maintaining female hostages taken by the Caliphate within their homes.¹⁰ Their support provides an essential

WASH. POST (Feb. 8, 2018), <https://www.washingtonpost.com/news/post-nation/wp/2018/02/08/young-men-left-america-to-join-isis-they-fled-when-it-didnt-live-up-to-their-expectations/> (discussing the amount of people who traveled to Syria and Iraq as of 2018 to join ISIS and the number of men disillusioned after arriving).

³ See *How Many IS Foreign Fighters are Left in Iraq and Syria?*, BBC NEWS (Feb. 20, 2019), <https://www.bbc.com/news/world-middle-east-47286935> (detailing that more than 40,000 foreign fighters have traveled to the Levant from 110 countries to join terror organizations); “*We Have a Terror Recruiting Problem in Minnesota*”, CBS NEWS (Apr. 20, 2015), <https://www.cbsnews.com/news/six-minnesota-men-arrested-trying-to-join-isis-identified/>.

⁴ Anita Peresin, *Fatal Attraction: Western Muslimas and ISIS*, 9 PERSPS. ON TERRORISM 21, 21 (2015).

⁵ See *id.* (stating “[n]o extremist group has been able to attract so many female Western recruits so far, and their numbers continue to grow.”).

⁶ *I Was Groomed to Become an ISIS Bride*, GRAZIA (July 2, 2019), <https://graziadaily.co.uk/fashion/shopping/groomed-become-isis-bride/> (detailing the persuasion techniques used to recruit ISIS Brides to travel to join ISIS).

⁷ See Anita Peresin, *Why Women from the West are Joining ISIS*, 56 INT’L ANNALS OF CRIMINOLOGY 32 (2018).

⁸ *Id.*

⁹ Lydia Khalil, *ISIS: Women’s Work?*, LOWY INST. (July 15, 2019), <https://www.lowyinstitute.org/the-interpreter/isis-women-s-work/> (“the definition of “participation” or “support” of a terrorist organisation must be expanded to account for the full contribution of women in jihad, including the essential state-building tasks these women performed – such as supporting combatants through many forms of domestic and unseen labour, educating recruits, and bringing up children in the ideology – and not just carrying out attacks, recruiting, and spreading propaganda.”).

¹⁰ See, e.g., Martin Chulov, *Isis Wife and Alleged Kayla Mueller Jailer: ‘Our husbands became like wild animals’*, THE GUARDIAN (May 31, 2019, 8:00 AM), <https://www.theguardian.com/world/2019/may/31/isis-wife-alleged->

level of organization for ISIS which allows the fighters to focus on the battlefield.¹¹ This impact is critical to the success of ISIS and their ability to grow.¹² However, as ISIS has begun to lose its strongholds, women are increasingly seeing battlefield roles.¹³

Women and girls, some as young as fifteen, have left the comforts of the Western world in order to aid ISIS in the way that they have been convinced is correct; namely, these young women are charged with having babies for the Caliphate.¹⁴ Miscarriage and infant death are common amongst a number of other issues that women face in these war-torn societies.¹⁵ Often their husbands are killed on the battlefield.¹⁶ These dangers and other factors often prompt these women to seek return to their homes in Western nations.¹⁷

The idea of the right of return to your home country can be found going back centuries; one early example comes from the Magna Carta, which codified the right of return more than eight centuries ago.¹⁸ The right of return is so ubiquitous that it has become part of common

kayla-mueller-jailer-umm-sayyaf-husbands-wild-animals (detailing one ISIS bride's role in the jailing of captive women).

¹¹ Khalil, *supra* note 9.

¹² *Id.* (“Without the wives and mothers of ISIS, the jihad cannot continue.”).

¹³ Benedetta Argentieri, *From Brides to Battlefield, Women Taking Up New Roles with ISIS*, ALARABIYA NEWS (May 20, 2020), <https://english.alarabiya.net/perspective/2015/04/02/From-brides-to-battlefield-women-taking-up-new-roles-with-ISIS->.

¹⁴ The Takeaway, *Why Young Women Join ISIS & How to Stop Them*, WNYC STUDIOS (Feb. 26, 2015), <https://www.wnycstudios.org/podcasts/takeaway/segments/why-young-women-join-isis-and-how-stop-them> (discussing multiple fifteen-year-old girls, a sixteen-year-old girl, and seventeen-year-old girl who left Western countries to go to Syria); Tim Wyatt, *Shamima Begum: ISIS Child Bride Says She Had ‘Good Time’ in Syria but Wants to Bring Baby Home*, INDEPENDENT (Feb 17, 2019), <https://www.independent.co.uk/news/uk/home-news/shamima-begum-isis-bride-baby-return-uk-syria-good-time-a8783381.html> (“‘At first it was nice, it was how they showed it in the videos. You come, make a family together,’ she said.”).

¹⁵ *Compare Country Profiles: Syrian Arab Republic*, UNICEF, <https://data.unicef.org/country/syr/> (last visited Dec. 2, 2019) (17 deaths per 1,000 live births in 2017 in Syria and an increase from 2011) *with Country Profiles: United States*, UNICEF, <https://data.unicef.org/country/usa/> (last visited Dec. 2, 2019) (6.8 deaths per 1,000 live births in 2017 in the United States and a steady decrease from each previous year).

¹⁶ George Petras & Chad Palmer, *Timeline: Hoda Muthana, ISIS bride*, USA TODAY, <https://www.usatoday.com/pages/interactives/isis-bride-timeline/> (last visited Dec. 5, 2019) (“Muthana's first husband [was] killed by a Jordanian airstrike in the Kurdish town of Kobani.”).

¹⁷ *See generally id.*

¹⁸ *English translation of Magna Carta*, BRITISH LIBR. ¶ 42 (Jul. 28, 2014), <https://www.bl.uk/magna-carta/articles/magna-carta-english-translation#> (last visited Apr. 19, 2021) (“In future it shall be lawful for any man to leave and return to our kingdom unharmed and without fear, by land or water, preserving his allegiance to us, except in time of war, for some short period, for the common benefit of the realm.”).

law.¹⁹

These notions have been challenged in recent years by the evolving threat of global terrorism. More than 550 Western women who fled to Iraq and Syria and in recent years, attention has been brought to these numbers as the media covers the stories of those who have attempted to repatriate to their respective countries.²⁰ This is true of some of those who fled from the U.S. as well.²¹ It has been difficult to determine the influence that these women have had on the terror activities of ISIS.²² While some of these women took a role as a housewife, others took an active role in terrorist acts of the organization.²³ Discerning between these two is difficult to say the least.²⁴

Many countries that have received these requests have denied reentry and have sometimes revoked citizenship without due process.²⁵ This paper will argue that the United States and other Western nations are violating their own laws by refusing the return of ISIS brides, or their children, with citizenship.²⁶ For purposes of this paper, we will focus on the United States' role in these violations. These laws include the domestic law, 8 U.S. Code § 1481,

¹⁹ See *Rule 132. Return of Displaced Persons*, INT'L COMM. OF THE RED CROSS: IHL DATABASE: CUSTOMARY IHL, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule132 (last visited Apr. 19, 2021) (“Displaced persons have a right to voluntary return in safety to their homes or places of habitual residence as soon as the reasons for their displacement cease to exist.”).

²⁰ Kelly McLaughlin, *11 American Women Who Left the US to Become ISIS Brides and Fighters*, INSIDER (Feb. 21, 2019), <https://www.insider.com/american-women-isis-brides-fighters-2019-2> (“In recent weeks, several women from across the world who are now living in Syrian refugee camps have identified themselves as ISIS brides, asking to return home to the US, Europe, and Canada.”).

²¹ *Id.*

²² Peresin, *supra* note 7; Nabih Bulos, *Were the Brides of Islamic State Cloistered Housewives or Participants in Atrocities?*, L.A. TIMES (Mar. 18, 2019), https://web.archive.org/web/20190320120753/https://www.heraldmillmedia.com/news/nation/were-the-brides-of-islamic-state-cloistered-housewives-or-participants/article_46e2c6bb-5c89-562b-a7b0-0b14415cd527.html.

²³ Bulos, *supra* note 22.

²⁴ *Id.*

²⁵ Tara John, *Shamima Begum to Be Stripped of British Nationality and Will Not Be Allowed into Bangladesh, Government Says*, CNN (Feb. 22, 2019), <https://www.cnn.com/2019/02/20/uk/shamima-begum-uk-citizenship-stripped-gbr-intl/index.html>; Elian Peltier, *Shamima Begum Loses Effort to Return to U.K. in Fight for Citizenship*, N.Y. TIMES (Feb. 26, 2021), <https://www.nytimes.com/2021/02/26/world/europe/shamima-begum-citizenship.html>.

²⁶ *Infra* § III.

and international laws, Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.²⁷ Finally, the paper will argue that, in addition to violating the laws set forth, it is tactically unproductive to deny reentry to this group of people, even when they have advanced the goals of ISIS through violence.²⁸

IV. BACKGROUND

F. 8 U.S. Code § 1481, Universal Declaration of Human Rights, and International Covenant on Civil and Political Rights.

Birthright citizenship is dictated by 8 U.S. Code § 1401 Nationals and Citizens of United States at Birth, which states, “The following shall be nationals and citizens of the United States at birth: (a) a person born in the United States, and subject to the jurisdiction thereof.”²⁹ In spite of this law, the U.S. reserves the right to revoke citizenship under U.S. Code § 1481. U.S. Code § 1481 sets forth regulations on stripping a natural-born citizen of the United States of their citizenship.³⁰ This law codifies the rights long recognized by the United States since the formation of the country to the preservation of citizenship.³¹ This law allows for the revocation of one’s citizenship for certain voluntary acts with the intention of relinquishing citizenship.³²

Further, *Fikre v. FBI* established that “the right to return to the United States is inherent in American citizenship.”³³ The court states that “because the Supreme Court has described the right of an American citizen to return to the United States from abroad as absolute, ... the right of a citizen to return to the United States from abroad is cognizable under substantive due

²⁷ *Infra* § II.

²⁸ *Infra* § IV.

²⁹ 8 U.S. Code § 1401.

³⁰ 8 U.S. Code § 1481.

³¹ Edward J. Erler, *From Subjects to Citizens: The Social Compact of Origins of American Citizenship*, in *THE AMERICAN FOUNDING AND THE SOCIAL COMPACT* (Ronald J. Pestritto & Thomas G. West eds. 2003).

³² *See generally* 8 U.S. Code § 1481.

³³ *See Fikre v. FBI*, 23 F.Supp.3d 1268, 1280 (citing *Nguyen v. Immigration and Naturalization Serv.*, 533 U.S. 53, 67 (2001)) (holding that citizenship in the United States includes “an absolute right to enter its borders.”).

process.”³⁴

The Universal Declaration of Human Rights (“UDHR”) was adopted in December of 1948 with only ten countries not voting for the Declaration out of fifty-eight.³⁵ This declaration was adopted to establish basic guarantees in human rights, largely in response to the atrocities committed during World War II.³⁶ As such, the United Nations recognized the freedom of movement and the right to have a nationality, through Article 13 and Article 15 respectively.³⁷

Furthering the human rights established by the UDHR, the International Covenant on Civil and Political Rights (“ICCPR”) was established in 1966.³⁸ The ICCPR was one of two treaties created “[t]o codify the rights embodied in the UDHR.”³⁹ Like the UDHR, the ICCPR reiterates the right to freedom of movement and restricts arbitrary deprivation of the right to reentry through Article 12.⁴⁰ The ICCPR has been widely ratified and accepted by Western nations, including the United States, binding them to its provisions.⁴¹

³⁴ *Id.*

³⁵ *International Bill of Human Rights: Universal Declaration of Human Rights: resolution / adopted by the General Assembly*, UNITED NATIONS DIGIT. LIBR., <https://digitallibrary.un.org/record/670964?ln=en&p=Resolution+217%28III%29+A> (Yemen and Honduras did not vote and Byelorussian SSR, Czechoslovakia, Poland, Saudi Arabia, Ukrainian SSR, Union of South Africa, USSR, and Yugoslavia abstained from the vote); *see also* Peter Danchin, *Drafting History*, COLUMBIA U. http://ccnmtl.columbia.edu/projects/mmt/udhr/udhr_general/drafting_history_10.html (stating the reasons for the abstention of votes).

³⁶ *Universal Declaration of Human Rights: History of the Document*, UNITED NATIONS, <https://www.un.org/en/about-us/udhr/history-of-the-declaration> (last visited Apr. 19, 2021) (describing how world leaders decided to complement the UN Charter with a road map to guarantee the rights of every individual everywhere).

³⁷ G.A. Res. 217 (III) A, Universal Declaration of Human Rights, arts. 13, 15 (Dec. 10, 1948) [hereinafter UDHR].

³⁸ International Covenant on Civil and Political Rights, Dec. 16, 1966, S. Exec. Rep. 102-23, 999 U.N.T.S. 171. [hereinafter ICCPR].

³⁹ Timothy G. Joseph, *A Brief History of the International Covenant on Civil and Political Rights*, J. OF L. & INT’L AFFS. AT PENN STATE L.: JLIA BLOG (Dec. 3, 2015), <https://sites.psu.edu/jlia/a-brief-history-of-the-international-covenant-on-civil-and-political-rights/> (“The Universal Declaration of Human Rights is not legally binding on states parties. To codify the rights embodied in the UDHR, two treaties would be created: the International Covenant on Civil and Political Rights (“ICCPR”) and the International Covenant on Economic, Social and Cultural Rights (“ICESCR”).”).

⁴⁰ ICCPR, art. 12.

⁴¹ *Status of Treaties: International Covenant on Civil and Political Rights*, UNITED NATIONS TREATY COLLECTION, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&clang=_en (last visited Apr. 19, 2021) (noting, however, that the United Kingdom expressed reservations to Article 12 stating that it is “subject to the provisions of any such legislation as regards persons not at the time having the right under the law of

G. *The Western response to the request for return by ISIS brides.*

Many Western nations, including France, Ireland, the United Kingdom, Canada, and the United States, have been faced with requests for return from women and girls who have absconded from their nation to marry members of ISIS.⁴² Many of these nations have refused these requests.⁴³ Former President Trump called for other nations to repatriate ISIS brides who fled their country, but in practice denied return to at least one from the United States.⁴⁴ At least one other woman with dual citizenship for Canada and the United States remains in a camp as well.⁴⁵

Hoda Muthana is one example of an ISIS bride who requested to return to the United States.⁴⁶ Muthana was born in New Jersey in 1994 to a former Yemeni diplomat to the United States.⁴⁷ She left her home in Alabama when she was just twenty as a sympathizer of the ISIS cause and was given a list of men from whom to choose a husband.⁴⁸ Her first two husbands were killed in combat.⁴⁹ Muthana now has a 2-year-old child that she raises in a camp, guarded

the United Kingdom to enter and remain in the United Kingdom.”).

⁴² See Kelly McLaughlin, *ISIS Brides from Canada, The US, and Europe Are Asking to Return Home Years After Fleeing for Syria. Here Are Their Stories*, INSIDER (Feb. 19, 2019), <https://www.insider.com/isis-brides-asking-to-return-home-years-after-fleeing-for-syria-2019-2>. However, Ireland has recently split from these nations tactics and worked out a process to bring back a citizen that formerly served in their military. *Contra* Sinead Baker, *An ISIS Bride Who Left Ireland to Go to Syria Was Just Flown Home and Immediately Arrested*, BUS. INSIDER (Dec. 1, 2019), <https://www.businessinsider.sg/irish-isis-bride-lisa-smith-brought-home-arrested-2019-12/> (stating that the primary concern was the two-year-old caught in a warzone).

⁴³ Jytte Klausen, *Thousands of Westerners Joined ISIS. Should They Be Allowed to Return?*, FOREIGN AFFS. (June 6, 2019), <https://www.foreignaffairs.com/articles/europe/2019-06-06/jihadists-head-home> (“Their governments, however, don’t want to take the jihadists back—and are resorting to dubious measures to keep them out.”).

⁴⁴ Conor Finnegan & Elizabeth McLaughlin, *American Women, Children Who Lived Under ISIS Transferred to US from Syria*, ABC NEWS (June 5, 2019), <https://abcnews.go.com/Politics/american-women-children-lived-isis-transferred-us-syria/story?id=63505693> (“The Trump administration has consistently called on all countries to accept the return of their foreign terrorist fighters and then prosecute or otherwise punish them.”).

⁴⁵ See Sirwan Kajjo, *Canada Urged to Repatriate IS Suspects, Relatives Held in Syria*, VOICE OF AM. (July 1, 2020), <https://www.voanews.com/extremism-watch/canada-urged-repatriate-suspects-relatives-held-syria>.

⁴⁶ See generally Rukmini Callimachi & Catherine Porter, *2 American Wives of ISIS Militants Want to Return Home*, N.Y. TIMES (Feb. 19, 2019), <https://www.nytimes.com/2019/02/19/us/islamic-state-american-women.html>.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ See Luke Denne & Gabriel Chaim, *U.S.-Born Isis Bride Says 'Everyone Deserves A Second Chance'*, NBC NEWS (Nov. 8, 2019), <https://www.nbcnews.com/news/world/u-s-born-isis-bride-says-everyone-deserves-second-chance-n1075046>.

by the all-female Kurdish guard.⁵⁰ The Trump administration barred her return, claiming that, as the daughter of a diplomat, she is not an American citizen. Despite the fact that Muthana's father had left his position before her birth, the Trump administration claimed he still qualified as a diplomat because the U.S. Mission to the United Nations had not received notice of his resignation.⁵¹ However, Hoda Muthana had been issued a U.S. passport and that passport was even renewed.⁵²

Dual US-Canadian citizen Kimberly Gwen Polman is another ISIS bride who has not been repatriated. While her hometown is Hamilton, Ontario, and Canada has failed to repatriate her as of now, the United States has also left her in limbo in a camp abroad.⁵³ One article as of February of 2019 stated that at least thirteen American women had not been repatriated.⁵⁴ It is unclear if all these women were repatriated, but one report states that over a dozen U.S. citizens captured with ISIS were repatriated as of June of 2019.⁵⁵

V. ANALYSIS

H. America cannot revoke an ISIS bride's citizenship under U.S. Code § 1481 as it is not applicable to ISIS brides.

The standard of natural-born citizenship is laid out in 8 U.S. Code § 1401.⁵⁶ In one instance, the U.S. government has refused entry to Hoda Muthana, claiming that she does not qualify as a citizen under 8 U.S. Code § 1401.⁵⁷ For support, the government points to the USCIS Policy Manual, which states that children of foreign diplomats do not qualify for

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.* It is important to note that Yemen was in the midst of a civil war and the said fallout during this time.

⁵³ Callimachi & Porter, *supra* note 46.

⁵⁴ *Id.*

⁵⁵ See Finnegan & McLaughlin, *supra* note 44.

⁵⁶ 8 U.S. Code § 1401.

⁵⁷ Conor Finnegan, 'ISIS bride' Hoda Muthana is Not a US citizen, Sec. Pompeo Says, Despite Lawyer's Assertions, ABC NEWS (Feb. 20, 2019), <https://abcnews.go.com/US/isis-bride-hoda-muthana-us-citizen-sec-pompeo/story?id=61193487>.

citizenship under 8 U.S. Code § 1401.⁵⁸ However, Muthana’s father had left his position by the time of her birth, and it was assumed that she was a U.S. citizen and she was treated as such.⁵⁹

Muthana was born after her father had completed his duties as a diplomat but remained in the United States.⁶⁰ She had been granted an American Passport, a clear admission from the United States that she was considered a citizen at some stage of her life. However, this claim to citizenship has been tested in court, and the D.C. Circuit court held that Muthana is not a citizen, despite the surrender of her father’s diplomatic credentials a month prior to her birth.⁶¹ This decision leaves Muthana a stateless person.⁶²

Regardless of this particular controversy, ISIS brides with no conflict of citizenship under 8 U.S. Code § 1401 do not meet the criteria for revocation of citizenship set forth by the text of 8 U.S. Code § 1481.⁶³ Below, we will address provisions (a)(2), (3), and (7) as potentially applicable provisions.

8 U.S. Code § 1481(a)(2) states that citizenship may be considered to be surrendered when an individual “tak[es] an oath or mak[es] an affirmation or other formal declaration of allegiance to a foreign state or a political subdivision thereof, after having attained the age of eighteen years.”⁶⁴ The first issue with applying this provision is that some ISIS brides have not

⁵⁸ U.S. CITIZENSHIP AND IMMIGRATION SERVICES, POLICY MANUAL: CHAPTER 3 – CHILDREN BORN IN THE UNITED STATES TO ACCREDITED DIPLOMATS, <https://www.uscis.gov/policy-manual/volume-7-part-o-chapter-3>.

⁵⁹ Callimachi & Porter, *supra* note 46.

⁶⁰ Luke Denne, *American-born ISIS Bride Not a Citizen, Judge Rules*, NBC NEWS (Nov. 15, 2019), <https://www.nbcnews.com/news/world/american-born-isis-bride-not-citizen-judge-rules-n1082766>.

⁶¹ *Contra* Muthana v. Pompeo, No. 19-5362 (D.C. Cir. Jan. 19, 2021) (ruling that Hoda Muthana did not have citizenship despite the issuance of a passport because though her father's diplomatic posting had ended before she was born, the notification of his status change had not been received). It is worth noting also, the siblings of Hoda Muthana went through naturalization, indicating that the Muthana family likely would have applied for naturalization for Hoda as well had they been given any indication that Hoda was not a citizen by natural birth.

⁶² *Mike Pompeo on Hoda Muthana: ‘She is not a US citizen’*, NBC NEWS (Feb. 21, 2019), <https://www.nbcnews.com/dateline/video/mike-pompeo-on-hoda-muthana-she-is-not-a-us-citizen-1446009923715> (“She’s a terrorist, she is not a U.S. citizen, she ought not return to this country.”).

⁶³ 8 U.S. Code § 1481 (2011).

⁶⁴ 8 U.S. Code § 1481(a)(2) (2011).

yet attained eighteen when they leave their home nation.⁶⁵ Further, while ISIS brides often post their allegiance to the Caliphate on social media, it is unclear whether this qualifies as an oath equivalent to the “formal declaration” mentioned in 8 U.S. Code § 1481(a)(2)⁶⁶ Though ISIS brides often burn their passports, this is not considered a relinquishment of citizenship.⁶⁷ Finally, allegiance to ISIS is not allegiance to a Foreign State.⁶⁸ 28 U.S. Code § 1603 states that the definition of a foreign state “includes a political subdivision of a foreign state or an agency or instrumentality of a foreign state....”⁶⁹ If ISIS was considered to be a foreign state, it would undermine the United States’ entire mission against the terror organization and legitimize their organization as a facet of a foreign state.

U.S. Code § 1481(a)(3) states that citizenship may be considered to be surrendered when an individual is

entering, or serving in, the armed forces of a foreign state if (A) such armed forces are engaged in hostilities against the United States, or (B) such persons serve as a commissioned or non-commissioned officer.⁷⁰

Though ISIS is clearly engaged in hostilities with the United States, they cannot be deemed a foreign state.⁷¹ As discussed previously, qualifying ISIS as a foreign state undermines the U.S.’s goals in defeating the terror organization. Further, while ISIS brides sympathize with ISIS goals, they infrequently serve ISIS in an armed capacity.⁷²

⁶⁵ See generally Katrin Bennhold, *How Islamic State Lured Three UK Teenagers*, THE IRISH TIMES (Aug. 18, 2015), <https://www.irishtimes.com/news/world/middle-east/how-islamic-state-lured-three-uk-teenagers-1.2320836> (detailing the plans of the Bethnal Green Trio).

⁶⁶ Petras & Palmer, *supra* note 16. (detailing Muthana’s Twitter post about her plans to burn her passport).

⁶⁷ See Michael Lokesson, *How to Renounce Your Citizenship*, NAT’L GEOGRAPHIC (Aug. 23, 2013), <https://www.nationalgeographic.com/news/2013/8/130822-ted-cruz-howto-reno-ship/> (stating that renouncing citizenship is “not as easy as burning your old passport” and detailing relinquishment of U.S. citizenship).

⁶⁸ See 28 U.S. Code § 1603 (2009).

⁶⁹ *Id.*

⁷⁰ 8 U.S. Code § 1481(a)(3) (2011).

⁷¹ See 28 U.S. Code § 1603 (2009).

⁷² *Contra* Bulos, *supra* note 22 (discussing the evolving role of women in ISIS).

8 U.S. Code § 1481(a)(7) states that citizenship may be considered to be surrendered when an individual is:

committing any act of treason against, or attempting by force to overthrow, or bearing arms against, the United States, violating or conspiring to violate any of the provisions of section 2383 of title 18, or willfully performing any act in violation of section 2385 of title 18, or violating section 2384 of title 18 by engaging in a conspiracy to overthrow, put down, or to destroy by force the Government of the United States, or to levy war against them, if and when he is convicted thereof by a court martial or by a court of competent jurisdiction.⁷³

While ISIS's goals are not in line with American notions, war has not been levied against the United States.⁷⁴ Their decision to join ISIS in Syria is not a war against the United States but simply a war in which the United States has an interest in the outcome.⁷⁵

Further, according to most of the women now trying to repatriate, most of these brides did not bear arms against the United States, though they have encouraged attacks on its citizens.⁷⁶ They often play a role in the personal lives of the ISIS militants but do not touch the battlefield.⁷⁷ Although, it may be argued that they could be convicted for providing aid and comfort, it is not likely that charges of treason would be brought against ISIS brides.⁷⁸

The last line of section 1481(a)(7) is critical, stating “if and when he is convicted thereof by a court martial or by a court of competent jurisdiction.”⁷⁹ The citizenship of natural born ISIS brides under this provision is not revocable until conviction of these crimes.⁸⁰ This is highly

⁷³ 8 U.S. Code § 1481(a)(7) (2011).

⁷⁴ See U.S. CONST. art. III, § 3.

⁷⁵ See *When Congress Last Used Its Powers to Declare War*, NAT'L CONST. CTR. (Dec. 8, 2018), <https://constitutioncenter.org/blog/when-congress-once-used-its-powers-to-declare-war>.

⁷⁶ See McLaughlin, *supra* note 20.

⁷⁷ *Id.*

⁷⁸ 18 U.S. Code § 2384 (B) (2011) (Providing material support or resources to designated foreign terrorist organizations); see also Associated Press, *Past Americans Charged with Treason*, FOX NEWS (Jan. 13, 2015), <https://www.foxnews.com/story/past-americans-charged-with-treason> (recounting the conviction of Max Haupt for providing aid to his son, a Nazi saboteur).

⁷⁹ 8 U.S. Code § 1481(a)(7) (2011).

⁸⁰ See generally *id.*

improbable given the burden of proof required and that nobody has been convicted of the crime of treason since 1952.⁸¹ Treason has been charged federally in the United States less than 30 times with very few convictions.⁸² Part of the reason for this is that the Constitution of the United States made this a very restrictive law, requiring “two witnesses to the same overt act, or confession in open court.”⁸³

Finally, the most important wording in the statute requires that the citizen voluntarily performs any of the previous acts “with the intention of relinquishing United States nationality.”⁸⁴ In this context we should consider the terms “voluntary” and “intention.” It is important to assess the mentality and age of any citizen who leaves to be an ISIS bride. ISIS targets and exploits the vulnerability of the young.⁸⁵ Many of these young girls have gone through a period of grooming and brainwashing.⁸⁶ Though defenses of coercive persuasion have not typically worked,⁸⁷ research on the effects of pressures and marriages on the young female’s mind is crucial to consider.⁸⁸

The right of return for American citizens has been further solidified through American jurisprudence. An American citizen’s right to return to their country from another country has been noted as an absolute right.⁸⁹ The Supreme Court has acknowledged a substantive due

⁸¹ Morris M., *Every American Ever Convicted of Treason (And What Happened Next)*, THE GRUNGE, https://www.grunge.com/147135/every-american-ever-convicted-of-treason-and-what-happened-next/?utm_campaign=clip (last visited Dec. 4, 2019).

⁸² See generally *The Case for Treason*, CBS NEWS (Dec. 17, 2001), <https://www.cbsnews.com/news/the-case-for-treason/> (discussing the history of treason in the United States).

⁸³ See Morris M., *supra* note 81 (detailing all of those convicted of treason in the United States).

⁸⁴ 8 U.S. Code § 1481 (2011).

⁸⁵ See generally Jessica Trisko Darden, *Tackling Terrorists’ Exploitation of Youth*, AM. ENTER. INST. (May 6, 2019), <https://www.aei.org/research-products/report/tackling-terrorists-exploitation-of-youth/> (discussing the roles of youth in terror organizations, their journey to joining the organization, and recommendations on response).

⁸⁶ See *I Was Groomed to Become an ISIS Bride*, *supra* note 6.

⁸⁷ See *U.S. v. Hearst*, 563 F.2d 1331, 1335 (9th Cir. 1977) (stating that the jury found Hearst guilty despite the defense of duress, in which she contended that her co-participants made her engage in the robbery).

⁸⁸ See generally Darden, *supra* note 85, at 6.

⁸⁹ See *Fikre v. FBI*, 23 F.Supp.3d 1268, 1282 (D. Or. 2014).

process right that attaches to a person's interest in returning.⁹⁰ As citizens, ISIS brides enjoy an absolute right to return to their country. There is not sufficient reason to deny them this right and they have not been subjected to due process to do so.

I. America has violated the Universal Declaration of Human Rights by refusing re-entry to ISIS brides.

Article 13 of the UDHR states “(1) Everyone has the right to freedom of movement and residence within the borders of each state. (2) Everyone has the right to leave any country, including his own, and to return to his country.”⁹¹ Article 15 of the UDHR states “(1) Everyone has the right to a nationality. (2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.”⁹² These provisions are reflective of the long-held belief that there is an inherent right to the freedom of movement. The U.S., as a party to this declaration, risks violating the UDHR by denying their citizens reentry. The U.S. is not alone in violating the UDHR; the United Kingdom has also denied the right of return of Shamima Begum, a British ISIS bride.⁹³

ISIS brides have been denied their ability to travel and return to their country in accordance with Articles 13 and 15(2).⁹⁴ While these provisions do not mean that someone may not be prosecuted for their actions and intentions, it is the responsibility of the countries to allow for the return, even if in handcuffs, and not to strip its people of their citizenship without due process. Further, the U.S. and other nations have left individuals such as Muthana and Begum stateless, violating Article 15(1).⁹⁵ While their home countries have claimed that they can return

⁹⁰ *Id.*

⁹¹ UDHR, art. 13.

⁹² *Id.*, art. 15.

⁹³ See Yasmine Ahmed, *The UK Supreme Court Has Failed Shamima Begum*, HUM. RTS. WATCH (March 2, 2021), <https://www.hrw.org/news/2021/03/02/uk-supreme-court-has-failed-shamima-begum#> (detailing that Begum was denied return to the UK after becoming an ISIS bride).

⁹⁴ See generally UDHR, arts. 13, 15(2).

⁹⁵ See generally Reema Hibrawi, *The Curious Case of Hoda Muthana: A Former ISIS Member and US Citizen*, ATL.

to Yemen and Bangladesh respectively, Muthana and Begum do not have citizenship with these nations, nor have they ever.⁹⁶

Though the U.S. is a party to the UDHR, the Supreme Court has held that the UDHR is not binding on America without being codified in American law.⁹⁷ In spite of this, many argue that the UDHR is binding even on nations that have not accepted the Declaration.⁹⁸ By being a member of the United Nations, the U.S. and other nations have inherently agreed to these standards of human rights.⁹⁹

J. America has violated the International Covenant on Civil and Political Rights by refusing re-entry to ISIS brides.

The ICCPR was established to reinforce civil rights guaranteed to every person. Article 12 of the ICCPR states

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence. 2. Everyone shall be free to leave any country, including his own. 3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant. 4. No one shall be arbitrarily deprived of the right to enter his own country.¹⁰⁰

Article 12 enforces the idea that individuals do not inherently forfeit their nationality by leaving their country of origin.¹⁰¹ The U.S. and other Western nations are thus violating Article 12 of the

COUNCIL (Feb. 21, 2019), <https://www.atlanticcouncil.org/blogs/menasource/the-curious-case-of-hoda-muthana-a-former-isis-member-and-us-citizen/>; John, *supra* note 25.

⁹⁶ See generally Hibrawi, *supra* note 95 (referring to Muthana as “now stateless”); John, *supra* note 25 (recounting that the Bangladesh government is “‘deeply concerned that she has been erroneously identified as a holder of dual citizenship shared with Bangladesh alongside her birthplace.’”).

⁹⁷ See *Sosa v. Alvarez-Machain*, 542 U.S. 692 (2004), (concluding that the Declaration “does not of its own force impose obligations as a matter of international law.”).

⁹⁸ Hurst Hannum, *The Universal Declaration of Human Rights in National and International Law*, 3 HEALTH & HUM. RTS. J. 145, 148 (“It is clear that principles initially considered by the international community to be ‘only’ goals or aspirations can develop into binding norms over time, if they become accepted as customary international law.”).

⁹⁹ See generally *id.*

¹⁰⁰ ICCPR, art. 12.

¹⁰¹ See *id.*

ICCPR by refusing re-entry to ISIS brides. The use of the word “arbitrarily” in this sense means in accordance with our laws and would imply a right to due process.¹⁰² While certain suits exist currently in the courts in the U.S. and the U.K., the decisions to revoke citizenship were not accompanied by due process.¹⁰³

However, this convention also grants the right of derogation.¹⁰⁴ Derogation grants a country the right to suspend certain laws, typically in emergency situations.¹⁰⁵ While the fight against ISIS puts a lot at stake, there is no emergency within the United States which warrants a total bar on the return of an American citizen that is entitled to due process.¹⁰⁶

VI. RECOMMENDATIONS

K. The United States and other Western nations should allow ISIS brides to return to the country to face due process to better monitor their movement and activities.

While many ISIS brides who have left their home country would like to avoid charges upon repatriation, none have offered an ultimatum that they want to return only if they can avoid charges. While the initial emotional reaction may be to punish these individuals for their transgressions by forcing them to stay abroad in detention, there are many more benefits to allowing them to return.

¹⁰² *Arbitrary*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/arbitrary> (“[D]epending on individual discretion (as of a judge) and not fixed by law”).

¹⁰³ See generally Denne, *supra* note 60; Dominic Casciani, *Shamima Begum: IS Bride Set to Be Granted Legal Aid*, BBC NEWS (Apr. 15, 2019), <https://www.bbc.com/news/uk-47934721>.

¹⁰⁴ ICCPR, art. 4 (“In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.”).

¹⁰⁵ *Derogations*, ICRC.ORG, <https://casebook.icrc.org/glossary/derogations> (last visited Dec. 2, 2019) (defining derogation in the scope of international law).

¹⁰⁶ See generally Indra Ekmanis, *The US is Currently in 31 Other National Emergencies. Here's What that Means*, PRI (Jan. 11, 2019), <https://www.pri.org/stories/2019-01-11/us-currently-31-other-national-emergencies-heres-what-means> (detailing then existing national emergencies); Damian Paletta et al., *Trump Declares National Emergency on Southern Border in Bid to Build Wall*, WASH. POST (Feb. 15, 2019), https://www.washingtonpost.com/politics/trumps-border-emergency-the-president-plans-a-10-am-announcement-in-the-rose-garden/2019/02/15/f0310e62-3110-11e9-86ab-5d02109aeb01_story.html (detailing Trump’s southern border emergency declaration).

When these individuals are within the control of a Western nation, there is less chance of escape. With previous U.S. policy changes by the Trump administration, the U.S. allowed Turkey to insert themselves into the conflict in Syria, which allowed Turkey to attack the Kurds.¹⁰⁷ These attacks allowed the ISIS Matchmaker, who asked to return to the U.K., to escape from the prison she was held in along with other members of ISIS.¹⁰⁸ She has since been found by Turkey and is being held in a makeshift jail, as of the most recent available information.¹⁰⁹

Taking these individuals back and allowing them to stand trial seems to ensure a much more favorable outcome. The more control the U.S. has, the easier it will be for the U.S. to monitor their movements and activities. Further, allowing the ISIS brides to be repatriated can potentially be used for intelligence value. While these women generally claim to have had little to no involvement in the tactical operations of ISIS, they clearly saw and heard many of the workings of the terror organization.¹¹⁰

L. The United States should repatriate ISIS Brides to avoid the perception that Muslim lives are not valued in Western countries.

ISIS is largely successful in recruiting via social media, essentially brainwashing these women to think the way that they do.¹¹¹ Engaging in this conflict with not just a terror

¹⁰⁷ See Zeke Miller & Lolita C. Baldor, *US to Step Aside for Turkish Assault on Kurds In Syria*, AP NEWS (Oct. 7, 2019), <https://apnews.com/1517087f2d3b4f6685fc9802bce370e6> (discussing how the United States allowed Turkish forces into northeast Syria); see also Anthony Dworkin, *Beyond Good and Evil: Why Europe Should Bring ISIS Foreign Fighters Home*, EUR. COUNCIL ON FOREIGN RELS. (Oct. 25, 2019), https://ecfr.eu/publication/beyond_good_and_evil_why_europe_should_bring_isis_foreign_fighters_home/ (detailing Turkish-led forces fighting in Syria).

¹⁰⁸ Raf Sanchez et al., *British Isil 'Matchmaker' Feared to Have Escaped After Mass Prisoner Breakout*, THE TELEGRAPH (Oct. 13, 2019), <https://www.telegraph.co.uk/news/2019/10/13/hundreds-islamic-state-prisoners-escape-amid-turkish-assault/>.

¹⁰⁹ Josie Ensor & Izzy Lyons, *British and Irish Women Who Recruited for Isil Found in Makeshift Jail After Escaping Detention Camp*, THE TELEGRAPH (Nov. 18, 2019), <https://www.telegraph.co.uk/news/2019/10/16/british-isil-recruiters-tooba-gondal-lisa-smith-found-makeshift/> (though she later deported from Turkey).

¹¹⁰ *C.f.* Charlie Parker, *Brainwashed British ISIS schoolgirl Shamima Begum, 19, Says Seeing Severed Heads in Bins 'Didn't Faze Me at All'*, THE SUN (Feb. 14, 2019), <https://www.thesun.co.uk/news/8425091/isis-schoolgirl-shamima-begum-severed-heads/> (recounting sights of severed heads and fatal airstrikes).

¹¹¹ See Jared Cohen, *Digital Counterinsurgency: How to Marginalize the Islamic State Online*, FOREIGN AFFS. (Dec. 2015), <https://www.foreignaffairs.com/articles/middle-east/digital-counterinsurgency> (stating that ISIS is “the first terrorist group to hold both physical and digital territory”).

organization but a way of thinking, a lack of compassion on the part of the West allows ISIS to make the argument that the lives of these young Muslim women do not matter to the Western world. These women experience danger from war, disease, and personal attacks.¹¹² Meeting this issue with compassion would be one of the best ways to fight this ideology.

Additionally, citizenship revocation encourages re-radicalization.¹¹³ Atlantic Council has stated:

It is problematic to revoke the citizenship of these young, disillusioned, and now stateless people as it leaves them under the mercy of the Syrian regime or in the care of international organizations managing refugee camps. Allowing people with extremist tendencies to remain in the country where they supported violence against Syrians, without resources and alternative avenues, encourages them to re-radicalize. If they have nowhere else to go or anyone to turn to, it is very likely they could rejoin ISIS in Syria or extremist groups elsewhere.¹¹⁴

To leave these women desolate with nowhere else to turn but back to the terror organization with their struggling children does nothing to teach the world that the West values all life.

M. The United States should allow ISIS brides to repatriate in order to avoid straining relationships with other nations.

By refusing repatriation of ISIS brides, Western nations put the burden on other nations.

According to The Irish Times, “Turkey has promised to repatriate dozens of Islamic State supporters to their native countries, including in cases where those countries have refused to take them back” and has criticized Western nations for their refusal.¹¹⁵ Ireland has since negotiated an

¹¹² See Merrit Kennedy, *Judge Rules That U.S.-Born Woman Who Joined ISIS Is Not a U.S. Citizen*, NPR (Nov. 15, 2019), <https://www.npr.org/2019/11/15/779788549/judge-rules-that-u-s-born-woman-who-joined-isis-is-not-a-u-s-citizen> (“She received threats, ‘and we believe that she continues to be in danger now.’”); see also Mark White, *IS Bride Shamima Begum 'At Real Risk of Death or Torture' After Loss of British Citizenship*, SKY NEWS, (Oct. 22, 2019), <https://news.sky.com/story/isis-bride-shamima-begum-appeals-against-loss-of-british-citizenship-as-she-tries-to-return-to-the-uk-11841671> (discussing the risk of violence and death faced by ISIS brides).

¹¹³ See Hibrawi, *supra* note 95 (stating “it would be more effective to bring them home and allow them to face the full extent of the law”).

¹¹⁴ *Id.*

¹¹⁵ Conor Gallagher, *Turkey to Deport Lisa Smith and Her Daughter to Ireland*, THE IRISH TIMES (Nov. 11, 2019), <https://www.irishtimes.com/news/crime-and-law/turkey-to-deport-lisa-smith-and-her-daughter-to-ireland-1.4079261>.

agreement with Turkey to take back a citizen that formerly served in the Irish military.¹¹⁶ Upon capture, Lisa Smith was under the control of Turkey, which did not want to have responsibility for using its assets to guard the former ISIS bride.¹¹⁷ Smith has since been arrested.¹¹⁸

Currently, Muthana is under the control of the YPJ, the all-female Kurdish militia group in the Roj refugee camp.¹¹⁹ These guards have been left by the United States to fight alone in Syria.¹²⁰ By refusing re-entry to ISIS brides, the United States and other Western countries are further straining the Kurds ability to guard others and enforce laws.

Should these situations continue, they pose the threat of weakening relationships amongst nations that have similar goals in defeating the Islamic State terrorist organization. Forcing other countries, typically those surrounding the conflict areas that often have less resources for justice, to take responsibility for a citizen that should be under the care of another nation is unfair.

VII. CONCLUSION

It is not often denied that the ISIS brides have committed crimes when leaving their home nation to join ISIS. Some have served in a domestic duty, while others have participated in combat.¹²¹ However, this does not entitle the United States or other nations to ban them from return. While the U.S. has made efforts to repatriate many ISIS brides, the U.S. clearly has not repatriated all ISIS brides. It is the duty of the U.S. to continue to repatriate ISIS brides rather than challenge their citizenship status. The U.S. has no legal grounds under U.S. Code § 1481 to

¹¹⁶ *Id.*

¹¹⁷ See generally *IS Bride Lisa Smith Arrested in Dublin After Being Deported from Turkey*, SKY NEWS (Dec. 1, 2019), <https://news.sky.com/story/is-bride-lisa-smith-returns-to-dublin-with-daughter-2-after-being-deported-by-turkey-11875228> (stating “Turkey said it no longer wanted to detain her.”).

¹¹⁸ *Id.*; see also *Lisa Smith: Trial of IS accused former soldier set for 2022*, BBC NEWS (Sep. 14, 2020), <https://www.bbc.com/news/world-europe-54150094> (stating that her trial has been set for 2022).

¹¹⁹ Denne & Chaim, *supra* note 49.

¹²⁰ See Dan Lamothe, *‘I Can’t Even Look at The Atrocities’: U.S. Troops Say Trump’s Syria Withdrawal Betrayed an Ally*, WASH. POST (Oct. 15, 2019), https://www.washingtonpost.com/world/national-security/i-cant-even-look-at-the-atrocities-us-troops-say-trumps-syria-withdrawal-betrayed-an-ally/2019/10/15/4e79b600-eecc-11e9-b648-76bcf86eb67e_story.html (detailing President Trump’s withdrawal of United States forces in Syria).

¹²¹ See, e.g., Argentieri, *supra* note 13.

deprive ISIS brides of citizenship.¹²² Likewise, the U.S. and other Western nations have an obligation under international law to repatriate ISIS brides.¹²³ While there are exceptions to these international and domestic laws, there is overwhelming evidence that these laws protect the typical ISIS bride.

Further, aside from legal right of return, there is strategic benefit to allowing these ISIS brides to return to their home nation. As discussed, allowing the ISIS bride to repatriate allows the Western governments to control the person, determine her involvement in the organization, and subject her to due process; reduces a view that Western nations devalue the lives of non-Judeo-Christian believers; and facilitates healthy relationships with allies in the fight against ISIS.¹²⁴ Because of the important role that women play in perpetuating ISIS population and ideology, it is critical that we stem ISIS's ability to control these women by allowing them to return to their country of origin. The U.S. and other Western nations have a duty to repatriate ISIS brides.

¹²² *See supra* § III(A).

¹²³ *See supra* § III(B).

¹²⁴ *See supra* § IV.